

Message Text

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ORIGIN ARA-20

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O R 280032Z JUL 74

FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA IMMEDIATE

INFO AMCONSUL RIO DE JANEIRO

C O N F I D E N T I A L STATE 163985

E.O. 11652:GDS

TAGS: ETRD, BR, US

SUBJECT:COUNTERVAILING DUTIES

REF: BRASILIA 5426

FOLLOWING IS TEXT OF REPLY TO GOB'S NOTE NO. 52 OF JUNE 25
AND TO THE EMBASSY'S AIDE MEMOIRE OF JUNE 17. EMBASSY IS
REQUESTED TO DELIVER THIS REPLY TO APPROPRIATE FONOFF
OFFICIAL; PLEASE INFORM DEPARTMENT WHEN THIS IS TO BE DONE
SO THAT WE MAY ALSO MAKE COPY AVAILABLE TO BRAZILIAN
EMBASSY.

1. I HAVE THE HONOR TO REFER TO YOUR NOTE NO 52 DATED
JUNE 25, 1974 AND TO THE BRAZILIAN EMBASSY'S AIDE MEMOIRE OF
JUNE 17, 1974 CONCERNING THE MATTER OF POSSIBLE APPLICATION
BY THE US OF COUNTERVAILING DUTIES ON NON-RUBBER FOOTWEAR
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OF BRAZILIAN ORIGIN. YOUR NOTE AND AIDE MEMOIRE WERE FOR-

WARDED TO THE DEPARTMENT OF STATE, AND CONSIDERED IN THE DEPARTMENTS OF STATE AND TREASURY.

2. THE USG IS AWARE THAT ITS ACTIONS UNDER THE US COUNTERVAILING DUTY LEGISLATION ARE A SOURCE OF LEGITIMATE CONCERN TO BRAZIL AND, INsofar AS LEGALLY POSSIBLE, HAS GIVEN FULL AND SYMPATHETIC CONSIDERATION TO THIS CONCERN THROUGHOUT THIS PROCEEDING. NEVERTHELESS, THE USG CANNOT IGNORE THE RELEVANT LEGISLATION AND RESOLVE THIS ISSUE THROUGH A SIMPLE ACT OF POLITICAL WILL INVOLVING, IN EFFECT, THE VIOLATION OF

US LAW. THE LEGISLATION REGARDING COUNTERVAILING DUTIES IS MANDATORY, LEAVING THE SECRETARY OF THE TREASURY NO DISCRETION TO REFRAIN FROM IMPOSING DUTIES IN THE EVENT HIS INVESTIGATION CONFIRMS THAT A BOUNTY OR GRANT EXISTS.

3. IN OUR VIEW, THE COUNTERVAILING DUTY LAW SHOULD NOT BE CONSTRUED AS A DEVICE TO LIMIT LEGITIMATE IMPORT COMPETITION. ITS PURPOSE IS TO NULLIFY THE BENEFITS OF EXPORT SUBSIDIES WHICH WOULD OTHERWISE GIVE FOREIGN SUPPLIERS AN UNFAIR COMPETITIVE ADVANTAGE IN THE US MARKET. ARTICLE VI OF THE GATT PERMITS CONTRACTING PARTIES TO LEVY A COUNTERVAILING DUTY TO OFFSET SUBSIDIES.

4. THE USG RECOGNIZES THAT THERE IS SOME DISAGREEMENT AS TO THE NATURE OF THE RIGHTS AND OBLIGATIONS OF CONTRACTING PARTIES OF THE GATT CONCERNING SUBSIDIES AND COUNTERVAILING DUTIES. IT IS CLEAR, HOWEVER, THAT UNDER THE PROTOCOL OF PROVISIONAL APPLICATION THE US IS EXEMPTED FROM THE INJURY REQUIREMENT EXPRESSED IN ARTICLE 6(A) OF THE GATT.

5. WITH RESPECT TO THE QUESTION OF DIFFERENTIATED TREATMENT IN THE FIELD OF SUBSIDIES AND COUNTERVAILING DUTIES FOR DEVELOPING COUNTRIES, THERE ARE AT PRESENT NO STATUTORY GROUNDS UNDER WHICH THE TREASURY DEPARTMENT COULD ACCORD PREFERENTIAL TREATMENT IN SOME CASES AND A MORE STRICT APPLICATION OF THE LAW IN OTHERS. INDEED, SUCH INCONSISTENT APPLICATION WOULD CLEARLY CONTRAVENE THE PRESENT LEGISLATION.

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6. NEVERTHELESS, THE USG DOES, OF COURSE, APPRECIATE THE SPECIAL NEEDS OF DEVELOPING COUNTRIES. IN THE TOKYO DECLARATION THE US RECOGNIZED "...THE IMPORTANCE OF THE APPLICATION OF DIFFERENTIAL MEASURES TO DEVELOPING COUNTRIES IN WAYS WHICH WILL PROVIDE SPECIAL AND MORE FAVORABLE TREATMENT FOR THEM IN AREAS OF THE NEGOTIATION WHERE THIS IS FEASIBLE AND APPROPRIATE." THE PROPOSED TRADE REFORM ACT SEEKS LEGISLATIVE AUTHORITY FROM THE CONGRESS

(ALREADY APPROVED BY THE HOUSE OF REPRESENTATIVES IN TITLE V OF THAT BILL) TO ESTABLISH A SYSTEM OF GENERALIZED PREFERENCES WHICH WOULD GRANT PREFERENTIAL ACCESS TO THE US MARKET FOR THE PRODUCTS OF DEVELOPING COUNTRIES UNDER CONDITIONS OUTLINED IN THE BILL. IF THE BILL IS ENACTED IN ITS PRESENT FORM, THESE PROVISIONS WILL SIGNIFICANTLY AFFECT ADMINISTRATION OF THE COUNTERVAILING DUTY LAW SINCE AN INJURY DETERMINATION BY THE TARIFF COMMISSION WILL BE REQUIRED FOR THOSE IMPORTED ARTICLES RECEIVING PREFERENTIAL TARIFF TREATMENT. FURTHERMORE, IN A RECENT MEETING OF A SUB-GROUP OF THE GATT TRADE NEGOTIATION COMMITTEE DEALING WITH NON-TARIFF BARRIERS, THE US INDICATED ITS WILLINGNESS

TO EXPLORE THE POSSIBILITY OF NEW AND COMPREHENSIVE RULES ON SUBSIDIES AND COUNTERVAILING DUTIES AND IN THAT CONTEXT TO DISCUSS DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES. WHEN INTERNATIONAL AGREEMENT IS REACHED ON THESE ISSUES, THE USG WOULD BE PREPARED TO SEEK CHANGES IN THE US LEGISLATION TO BRING IT INTO CONFORMITY WITH SUCH AN AGREEMENT.

7. HOWEVER, FOR THE PRESENT, THE USG MUST CONTINUE TO BE GOVERNED BY EXISTING LEGISLATION.

8. THE GOVERNMENT OF BRAZIL MAY ALSO BE AWARE OF THE FACT THAT UNITED STATES COURTS NOW HAVE BEFORE THEM SEVERAL CASES IN WHICH COMPLAINANTS IN OTHER COUNTERVAILING DUTY CASES ARE ASKING FOR COURT ORDERS COMPELLING THE SECRETARY OF THE TREASURY TO ACT ON THE COMPLAINTS. IT GOES WITHOUT SAYING THAT THE EXECUTIVE BRANCH OF THE USG CANNOT BE PUT IN A POSITION OF BEING ORDERED BY THE JUDICIARY TO PERFORM A FUNCTION THAT IT IS LEGALLY OBLIGED TO PERFORM. SUCH A SITUATION COULD ONLY BE DETRIMENTAL
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TO PUBLIC AND CONGRESSIONAL CONFIDENCE IN THE EXECUTIVE BRANCH AT A TIME WHEN MAJOR TRADE LEGISLATION IS BEING CONSIDERED BY CONGRESS.

9. IN VIEW OF THE IMPOSSIBILITY OF A POLITICAL SOLUTION TO THIS CASE, SINCE SUCH A SOLUTION WOULD ENTAIL VIOLATION OF THE OBLIGATION OF THE SECRETARY OF THE TREASURY TO IMPLEMENT MANDATORY LEGISLATION, AND IN RECOGNITION OF THE IMPORTANCE THE USG ATTACHES TO THE MAINTENANCE OF CORDIAL BILATERAL RELATIONS WITH BRAZIL, THE USG HOPES THAT THE TWO GOVERNMENTS CAN CONTINUE TO WORK TOGETHER ON THIS ISSUE AT A TECHNICAL LEVEL.

10. IN ANY EVENT THE USG WISHES TO EXPRESS ITS APPRECIATION FOR THE COOPERATIVE WAY IN WHICH THE BRAZILIAN

AUTHORITIES HAVE APPROACHED THIS PROBLEM AND IS PREPARED TO REMAIN IN CLOSE TOUCH WITH THE GOVERNMENT OF BRAZIL IN ORDER TO ASSURE THAT ANY FACTOR OR INTERPRETATION THAT THE GOB WISHES TO BRING TO OUR ATTENTION ARE GIVEN MAXIMUM REVIEW AND CONSIDERATION WITHIN THE PARAMETERS SET BY OUR REQUIREMENTS UNDER THE COUNTERVAILING DUTY LAW.

11. COMPLIMENTARY CLOSE. INGERSOLL

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